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In the Supreme Court of the United States

OCTOBER TERM, 1943

Nos. 38 and 39

COLGATE-PALMOLIVE-PEET COMPANY, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court for the District of Delaware (R. 1–7) is reported at 37 F. Supp. 794. The opinion of the Circuit Court of Appeals (R. 29–37), as amended (R. 42–44, 50), is reported at 130 F. 2d 913. A dissenting opinion in that court, filed on rehearing, appears at R. 44–46.

JURISDICTION

The order of the Circuit Court of Appeals entered November 11, 1942 (R. 50), denying a petition for a second rehearing, confirmed the judgments of the court previously entered (R. 46–47). By order of a Justice of this Court dated February 3, 1942, the time for filing a petition for certiorari was extended for a period of sixty days from February 10, 1943 (R. 52). A petition for a writ of certiorari was filed April 10, 1943, and was denied May 24, 1943. A petition for reconsideration of the petition for certiorari was filed June 10, 1943. The petition for reconsideration was allowed and writ of certiorari granted on June 14, 1943. (R. 53–54.) Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the tax imposed by Section 602½ of the Revenue Act of 1934, and by that section as amended, upon the "first domestic processing" of certain oils, applies to the first domestic processing after the effective date of the Act of oils which had received one or more domestic processings prior to that date.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set out in the Appendix, *infra*, pp. 39–50.

STATEMENT

Section 602½ of the Revenue Act of 1934 (Appendix, *infra*, pp. 39–40) imposed a tax upon the "first domestic processing" of certain vegetable oils. Treasury Regulations 48, promulgated August 17, 1934 (Appendix, *infra*, p. 47), defined "first domestic processing" to mean "first use in the United States on or after the effective date of the Act." The taxpayer is a corporation organized under the laws of Delaware, with its principal place of business in Jersey City, New Jersey. At all pertinent time it was engaged in the manufacture and sale of soaps and other products, in the preparation of which it used coconut oil, palm kernel oil, palm oil, and sunflower oil. (R. 8, 19.) On May 10, 1934, the effective date of the Revenue Act of 1934, the taxpayer had on hand a large quantity of these oils which had received one or more domestic processings. From May 10, 1934, to January 31, 1937, the taxpayer further processed these oils and, as required by the Regulations, paid a tax upon their first domestic processing after the effective date of the Act. (R. 8–16, 19–26.) Following denials of its claims for refund (R. 15, 24), the taxpayer brought two suits for the recovery of the taxes involved, in the aggregate principal amount of $2,362,382.37 (R. 15–16, 24). The District Court dismissed the complaints (R. 1, 18). On appeal, the Circuit Court of Appeals affirmed (R.

37–38). Thereafter it granted a petition for rehearing (R. 41), and again affirmed, one judge dissenting (R. 42–47). The court denied a petition for a second rehearing, at the same time amending its opinion on rehearing in certain particulars (R. 50).

SUMMARY OF ARGUMENT

I

Section 602½ of the Revenue Act of 1934 imposes a tax upon the "first domestic processing" of the oils here involved and

> of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, * * *.

The taxpayer's position, as we understand it, is that the taxable event is the first domestic processing occurring after the effective date of the Act, provided that the oils have not received any previous domestic processing. It is the Government's position that the taxable event is the first domestic processing occurring after the effective date of the Act, without further condition. There is no dispute as to the meaning of "domestic processing," which is defined in the statute; the controversy relates to the meaning and effect to be given the word "first."

The oils here involved are customarily subjected to a series of processings, and Congress did not identify any specific processing operation. Thus, any processing, whatever its physical aspects, may be a taxable processing so long only as it constitutes the statutory "first domestic processing." On this background, there are several independent criteria, all of which point to the necessary conclusion that the taxable event is simply the first domestic processing occurring after the effective date of the Act:

(1) The rule requiring the prospective operation of statutes goes far to resolve the controversy. In its statutory context, the natural meaning of "first domestic processing" is first occurring after the effective date of the Act, and the words exhaust their purpose when they have so identified the taxable event.

(2) The unusual phrasing "*previous first* domestic processing" [italics supplied], in connection with combinations or mixtures, shows that "first domestic processing" is not used in its "literal" sense, to mean first in point of time, but is used in a peculiar statutory sense.

Oil in combinations or mixtures is f ed from the tax not where it has undergone a *previous* domestic processing, but only where it has received a *previous first* domestic processing. A category of previous domestic processings would include all

prior domestic processings; the category of previous first domestic processings is narrower and must refer only to previous domestic processings occurring after the effective date of the Act. Hence, oil in combinations or mixtures is taxed, notwithstanding any number of times it may have been previously processed, unless it has undergone a *taxable* processing. Previous "first domestic processing" is thus used to mean previous first domestic processing occurring after the effective date of the Act and nothing else. There is, moreover, no reason to believe that "first domestic processing" has any different meaning when preceded by the word "previous" than the first time it appears in the statute in imposing the tax upon the oils outside of combinations or mixtures. The evident purpose, on the contrary, is to treat all the oils, whether in or out of combinations or mixtures, exactly the same. In the case of all the oils, therefore, the taxable "first domestic processing" is the first domestic processing after the effective date of the Act, without regard to prior domestic processings.

The tax is explicitly imposed upon the "first domestic processing" of the designated oils; whatever its meaning, "first domestic processing" must be defined in terms of a taxable event. The processing of oils in combinations or mixtures is hence relieved from the tax only when there has been a previous *taxable* processing of them.

Since there is no reason to believe that oils in combinations or mixtures are treated differently from other oils, it follows likewise that none of the oils is relieved from the tax by virtue of any number of domestic processings prior to the effective date of the Act.

(3) The taxpayer's insistence upon the so-called literal meaning of "first" is fallacious. If, as the taxpayer maintains, "first domestic processing" meant first in point of time, the statute on its face would require retrospective application, a result for which neither side contends. Properly analyzed, the question is whether there is anything in the statute which conflicts with the application of the tax to all first domestic processings occurring after the effective date of the Act; nothing in the statute does so conflict and, on the contrary, various other provisions of the statute lead to the same understanding of the taxable event.

(4) The purposes of Section 602½, both as a revenue measure and as a protection for domestic fats and oils, require that the stocks of oil on hand at the effective date of Section 602½ and still in the course of processing be included within the tax.

II

Treasury Regulations 48, promulgated August 17, 1934, define "first domestic processing" to mean "first use in the United States on or after

the effective date of the Act." The statute and the applicable Regulations have been in effect some nine years, and millions of dollars have been collected on this understanding of the taxable event. In these circumstances, particular weight should be given to the administrative construction of the statute in its narrow application to the stocks of oil on hand at the time it became effective. Moreover, the administrative construction is fortified by a series of amendments to the statute under circumstances which are persuasive that if Congress had disapproved of the Regulations it would have made known its disagreement.

ARGUMENT

The expression "first domestic processing" as used in Section 602½ of the Revenue Act of 1934, and in that section as amended, means the first domestic processing occurring after the effective date of the Act

The sole question consists of the proper construction to be given to the statutory term "first domestic processing," as applied to a large quantity of coconut oil, palm kernel oil, palm oil and sunflower oil which was subjected to a series of domestic processings occurring both before and after May 10, 1934, the effective date of the Revenue Act of 1934. It is the taxpayer's position, as we understand it, that the statutory "first domestic processing" means the first domestic processing occurring after the effective date of the Act *when, but only when, there has been no*

previous domestic processing (*infra*, pp. 18–19). It is the Government's position that the statutory "first domestic processing" means the first domestic processing occurring after the effective date of the Act, without more, and that there is no warrant for adding any further condition.

We shall discuss, first, the provisions of Section 602½ of the Revenue Act of 1934 (Appendix, *infra*, pp. 39–40) and their legislative background, which, we submit, support the conclusion that the taxable event is the first domestic processing occurring after the effective date of the Act, unencumbered by any further condition or qualification. At the very outset it should be emphasized, however, that the Court is not being called upon to write its construction of the statute on a blank sheet, as with respect to legislation freshly passed by the Congress and approved by the President. Section 602½ and the pertinent Treasury Regulations, which were promulgated August 17, 1934, have now been in effect some nine years. During this period the Treasury has consistently applied the statute so as to tax all first domestic processings occurring after May 10, 1934, and millions of dollars have been collected on this understanding of the taxable event. Until June 1, 1943, with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Durkee Famous Foods* v. *Harrison*, 136 F. 2d 303, no appellate court had denied the validity of the Regulations, and the

Circuit Court of Appeals for the Second Circuit, the Court of Claims[1] and the Circuit Court of Appeals for the Third Circuit, in the instant suits, had squarely sustained the Regulations. Pursuant to established principles, such a contemporaneous and continued administrative interpretation of a taxing statute will not be disturbed unless the administrative practice is plainly inconsistent with the statute. And this is especially true where, as here, the administrative construction is fortified by amendments to the statute under circumstances which peculiarly compel the conclusion that had Congress disapproved the Regulations it would have said so. Following our discussion of the provisions, subject matter and policy of Section 602½, we shall therefore proceed to a discussion of the weight to be accorded the Regulations in the circumstances presented.

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[1] *Loose-Wiles Biscuit Co.* v. *Rasquin*, 95 F. 2d 438 (C. C. A. 2d), certiorari denied, 305 U. S. 611; *Tasty Baking Co.* v. *United States*, 38 F. Supp. 844 (C. Cls.), certiorari denied, 314 U. S. 654. In addition to the *Durkee* case, *supra*, two early District Court rulings went against the Government. *Cincinnati Soap Co.* v. *United States*, 22 F. Supp. 141 (S. D. Ohio); *Armour & Co.* v. *Harrison* (N. D. Ill.), decided July 14, 1937 (19 A. F. T. R. 1347), appeal dismissed, 95 F. 2d 993 (C. C. A. 7th). The *Cincinnati Soap* decision was on demurrer and the case has not yet been tried. The *Armour* decision concerned primarily the question whether the materials with respect to which the tax was paid had retained their character as oil on the effective date of the Act. The case was settled prior to the argument of the appeal.

A. The text, subject matter and evident purpose of the statute

Section 602½ of the Revenue Act of 1934 imposes a tax upon the "first domestic processing" of the oils here involved, all of which are of foreign origin, as well as upon the—

> first domestic processing * * * of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, * * *.[2]

There is no argument as to the meaning of "domestic processing." The statute defines "first *domestic processing*" to mean the "first *use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed;* * * *." [Italics ours.] It is agreed that the oils in question received a "domestic processing" after the effective date of Section 602½ and that the tax has been paid on the first domestic processing occurring after that date. The controversy, then, turns upon the meaning and effect to be attributed to the word "first," which is not further illuminated by the foregoing definition.

There are two pertinent circumstances at the outset: (1) The vegetable oils referred to in the statute are customarily subjected to a series of

[2] This tax was considered in *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, where it was sustained against constitutional objections.

separate processing operations.[3] (2) The statute does not identify any particular process. Had the statute defined the taxable processing in terms of some specific operation, there could have been no controversy as to the proper description of the taxable event. Congress did not do so, but instead imposed a tax upon the "first domestic processing," whatever that operation might be. Thus, any particular processing may constitute a taxable processing. As to some oils, the taxable processing may be the neutralizing process; as to others, it may be the deodorizing process, the hydrogenating process, or some other operation differing radically in its physical nature from the first processing and perhaps far removed in point of time from it. By its failure to define the taxable event in terms of a particular operation, the statute shows that it is not concerned with the physical condition of the oil or the number of processings it has previously undergone, so long, only, as the later operation meets the statutory test

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[3] Treasury Regulations 48, as amended, Article 1 (m) (1) (Appendix, *infra*, p. 46), name nine district processing operations as illustrative of those to which the tax may apply. In the original Regulations this provision appeared as Article 1 (k) (1).

[4] As indicated, Treasury Regulations 48 have been amended since their original issuance. This has been done in order to conform them to amendments to the statute. As so amended, the Regulations are applicable to all periods since May 10, 1934. In referring to a provision of the Regulations in their present, amended form, we also give the corresponding provision, usually identical, in the original Regulations.

of "first domestic processing." This much, we believe, is not in dispute.

(1) Against this background, the rule requiring the prospective operation of statutes goes far to resolve the present controversy. What is taxed is a "domestic processing" of the oils. Had the statute used the expression "domestic processing" alone, there would doubtless be no question that only domestic processings occurring after the effective date of the Act were included within the description of the taxable event. This follows from the rule of prospective operation, that statutes are generally construed to operate only on events occurring subsequent to their effective date unless a contrary intention is manifested. Cf. *Hassett* v. *Welch*, 303 U. S. 303; *Bingham* v. *United States*, 296 U. S. 211; *Shwab* v. *Doyle*, 258 U. S. 529. Because of the circumstance that the oils involved are customarily subjected to a series of processings, the statute could not stop with a reference to a "domestic processing" but was required to go further in defining the taxable event. This was necessary both to avoid doubt as to the processing which should be taxed and, equally important, to make it plain that the same oils should not be subjected to tax on each successive stage of domestic processing. Congress supplied this necessary part of the definition not, as we have seen, by referring to a particular physical opera-

tion, but by the use of the word "first." In this context, the natural and reasonable meaning of "first" is the "first" of those domestic processings all of which might otherwise have been considered taxable. Thus, the use of the word "first" singles out the particular taxable processing from among those *occurring after the effective date of the Act.*

There can be no question that the language so adopted serves the dual purpose referred to. It designates an immediately identifiable processing; it effectively disclaims any intention to tax successive processing of the same oil. Here, then, is the plain and obvious reason for the use of the word "first." Under the rule of prospective operation, "first domestic processing" means the first domestic processing occurring after the effective date of the Act. The designation "first" exhausts its purpose when it has identified the particular taxable operation. If Congress had intended to attach some additional condition or qualification to the taxable event, such as a provision that the oils must not have received a domestic processing before the effective date of the Act, it would presumably have used express language manifesting this intention.

(2) That the taxable event is simply the first domestic processing after the effective date of the Act, is strongly confirmed by the unusual phrasing "*previous first* domestic processing" (italics supplied), which appears in the first sentence of

Section 602½ in connection with the reference to combinations or mixtures. The first sentence of Section 602½, as we have seen, imposes a tax upon the "first domestic processing" not only of the designated oils, but also—

> of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, * * *.

The same expression "previous first domestic processing" is repeated, in similar context, in the second sentence of Section 602½, which imposes an additional tax upon non-Philippine coconut oil. The unusual sequence "previous first" is strongly persuasive that "first domestic processing" has a point of reference other than first in time. If "first domestic processing" simply meant first in time, the expression "previous first" would be tautological, for the first processing in point of time would necessarily have been a "previous" processing. The insertion of "first" following "previous" necessarily indicates that "first domestic processing" is not used in what may be called its literal sense of first in time, but is used, instead, in a *statutory* sense peculiar to the context in which it is found.

A more detailed examination of the provisions in which "previous first domestic processing" appears affords compelling support to the view

that "first domestic processing" is used in a special statutory sense to tax all first domestic processings occurring after the effective date of the Act, regardless of previous domestic processings. Oil in combinations or mixtures is relieved from the tax not where it has received a *previous* domestic processing but only where it has received a *previous first* domestic processing. A category of previous domestic processings would be all-inclusive and would comprehend all prior domestic processings. It would serve to free from the tax oil which had received any prior domestic processing, whether or not a tax had been paid with respect to it. The category established, of previous *first* domestic processings, is narrower and must refer only to previous domestic processings occurring after the effective date of the Act, without regard to domestic processings prior to that date. Hence, oil in combinations or mixtures is taxed, notwithstanding any number of times it may have been previously processed, unless it has undergone a previous *taxable* processing. Previous "first domestic processing," as applied to oil in combinations or mixtures, means first domestic processing occurring after the effective date of the Act, without regard to processings prior to that date.

There is, in turn, no reason to believe that "first domestic processing" as applied to oil in combinations or mixtures means anything different

from what it does in the first two lines of the statute in imposing the tax on oils outside of combinations or mixtures. On the contrary, the evident purpose of the provision as to combinations or mixtures is to treat the taxable oils in combinations or mixtures precisely the same as when uncombined with other substances. A processor cannot escape the tax because the taxable oil is combined or mixed with other substances; on the other hand, the combination or mixture should not be taxed merely because it contains one of the designated oils unless the processing of the designated oil would itself be subject to tax. Accordingly, as applied to oils both in and out of combinations or mixtures, "first domestic processing" means the first domestic processing after the effective date of the Act, without regard to prior processings. See discussion by Judge Chase in the *Loose-Wiles* case, 95 F. 2d at p. 440.

Precisely the same end is reached by a somewhat different approach. However the taxable event is to be defined, it is manifest that every statutory "first domestic processing" of the designated oils is taxable, for the tax is expressly imposed upon their "first domestic processing." Whatever canons of statutory construction are to be invoked, the "first domestic processing" of the specified oils must be defined in terms of a taxable event. Oils in combinations or mixtures are sub-

jected to the tax where there has been no "previous first domestic processing" with respect to them. Therefore, whatever the definition of "first domestic processing," oils in combinations or mixtures must pay a tax upon the first domestic processing of the combination or mixture unless they have previously paid their way. Under the statutory language as to combinations or mixtures, whether such oils had been domestically processed once, twice or fifty times prior to the effective date of the Act would be immaterial; only a previous taxable "first domestic processing" suffices to relieve them of the tax. But there is no reason, as we have seen, to believe that oils in combinations or mixtures are treated any differently from other oils. The purpose of the statute, on the contrary, is to put them all on a parity. The only tenable conclusion is that they all are treated just the same. As to all of the oils, in or out of combinations or mixtures, the first domestic processing after the effective date of the Act is taxable, without regard to prior processings.

(3) The taxpayer's argument is constructed on the theory that the "first domestic processing" of the designated oils is not necessarily a taxable event. It insists that the statute recognizes two distinct classes of first domestic processings—one class, occurring prior to the effective date of the Act, which is not taxed, and a second class, occur-

ring after the effective date of the Act, which is taxed. (Pet. Br. 9–15, 54–55.) It is only on this basis that the taxpayer attempts to explain away the force of the 1936 amendment, which we discuss, *infra*, pp. 32–37. Fundamental to the taxpayer's theory, also, is the contention that the "ordinary," "normal," and "literal" meaning of "first" should be employed. (Pet. Br. 9–10.) But the foregoing is inconsistent with the taxpayer's basic position that "first domestic processing" cannot be taken so literally as to refer to a taxable operation occurring prior to the Act (Pet. Br. 60). Accordingly, the taxpayer could hardly mean that the statutory "first domestic processing" includes a first domestic processing in point of time, which may have occurred prior to the effective date of the Act, for this would immediately raise the question whether the statute was intended to be retrospectively applied, and the taxpayer certainly does not concede that it should be. Hence, it seems to follow that both parties must agree that the statutory "first domestic processing" refers only to first domestic processings occurring after the effective date of the Act, and that, in truth, neither contends for the "ordinary," "normal," or "literal" meaning of "first." The taxpayer, unlike the Government, would add the condition that the first domestic processing occurring after the effective date of the Act must also be the first in point of time without regard to the effective date.

The question, therefore, is not whether the so-called "literal" meaning of "first" should be adopted but whether there is anything in the statute which conflicts with the application of the tax, without additional qualification, to the first domestic processings occurring after the effective date of the Act. The statute will be searched in vain for any such contradiction. On the contrary, the last part of the second sentence of Section 602½ (a) points in the same direction as the remainder of the section. That sentence expressly excludes from the additional tax of two cents per pound coconut oil which (a) is wholly the production of the Philippine Islands or other possessions of the United States; (b) was produced wholly from materials grown or produced in the Philippine Islands or other possessions of the United States; (c) was brought into the United States on or before the thirtieth day after the enactment of the Act, or produced from materials brought in on or before the thirtieth day after the enactment of the Act; or (d) was purchased under a bona fide contract entered into prior to that date. These exclusions from the imposition of the additional tax of two cents per pound are clear and precise, and it is reasonable to assume that had Congress intended to exclude from the operation of the basic tax oils which had been subjected to nontaxable domestic processing prior to the effective date of the Act, it would have

unambiguously expressed its intent in similar terms.

(4) Section 602½ is not only a revenue measure but was also intended to protect the use of domestic fats and oils by neutralizing the competitive advantage assertedly enjoyed by foreign oils.[4] It is apparent that these purposes would be substantially thwarted if, under the taxpayer's construction, the large quantities of oils on hand in this country which had received one or more domestic processings prior to May 10, 1934, were permitted to escape taxation upon subsequent processing. The collection of revenue would assuredly suffer and, likewise, the protection of domestic fats and oils would be postponed until such time as the existing quantities of domestically processed foreign oils were consumed. That the quantities of previously processed foreign oils on hand were substantial and that, under the taxpayer's construction, there would have been a marked delay in the effective operation of Section 602½ is indicated by the present case. As late as January 1937, the taxpayer was still processing oils which had received one or more previous domestic processings prior to May 10, 1934.

The taxpayer contends that domestic fats and oils could not, in any event, secure protection

[4] See the statement of Mr. Shallenberger explaining the reasons for the tax. Cong. Rec. Vol. 78, Part 3, pp. 2528–2530.

against foreign oils already in this country on May 10, 1934, and previously domestically processed. The taxpayer argues (Br. 36) that to—

> the extent of his current supply of processed oils on hand the domestic manufacturer was not a potential customer for domestic fats and oils as substitute raw materials.

But if this proves anything it proves too much. If the current supply of domestically processed foreign oils on hand would continue to displace domestic fats and oils, so likewise would the current supply of nonprocessed foreign oils. Accordingly, on the taxpayer's reasoning it was futile for Congress to impose a tax with respect to the first domestic processing after the effective date of Section 602½ of *any* foreign oils then in the hands of domestic manufacturers, whether previously domestically processed or not.

The probable and reasonable view which Congress held, we believe, is that immediately upon the enactment of Section 602½ the competitive advantage of foreign oils would be effectively dissipated, on the condition, that is, that all such foreign oils should be taxed on subsequent processing. The ultimate consumer no less than the domestic manufacturer was a potential customer for domestic fats and oils. Despite his current supply of foreign oils the domestic manufacturer would be required to meet competitive conditions as they developed and if another manufacturer,

not stocked up with foreign oils, was able to outsell him by the use of domestic fats and oils, he would be required to handle increasing quantities of the domestic products. The supply of foreign oils already in this country would be directed of necessity into the restricted usages for which domestic fats and oils by their nature could not provide a satisfactory substitute. The view of the operation of economic laws asserted by the taxpayer would seem to apply only if all domestic manufacturers were currently stocked up with foreign oils, and, by concerted action, agreed to handle no domestic fats and oils until the foreign stocks had been sold. It seems unlikely that Congress would make this assumption.

It is an assumption, moreover, which Congress refrained from making when it enacted the amendments to Section 602½ provided by Section 702 of the Revenue Act of 1936 (Appendix, *infra*, pp. 41–42). By those amendments, Congress extended the processing tax to include the independent processing of the fatty acids and salts of certain of the taxable oils. We discuss those amendments in some detail, *infra*, pp. 32–37. Suffice it to point out at present that by the terms of the amendments the fatty acids and salts were subjected to a tax upon their "first domestic processing" following the effective date of the amendments, *without regard to the number of prior domestic processings, unless a tax had previously been paid with respect to them.* By this treatment of the newly

taxed fatty acids and salts Congress manifested an understanding of the purposes of the processing tax and of the operation of economic laws wholly contrary to that asserted by the taxpayer.

A revenue statute, like any other act, should be given a reasonable construction and not one that is objectionable in its practical and equitable effects. The taxpayer's construction, furthermore, would violate this principle and would result in serious inequities between domestic processors, as the following illustration will show: Suppose that domestic processors A and B each had on hand on May 9, 1934, 100,000 pounds of coconut oil; that A was able to subject his stock to a neutralizing process on or prior to that date; that B's stock had already been neutralized prior to importation but that he was unable further to process it before May 10, 1934, the effective date of the Act; and that both processors performed the identical operation of bleaching their respective stocks subsequent to May 10, 1934. Under the taxpayer's construction, processor B in these circumstances would be required to pay the tax for performing the identical operation which was performed by A, but A would escape the tax. This application would obviously give A a substantial competitive advantage over B—and an advantage which on any view finds no basis in the purposes of the Act. The proper construction, on the contrary, would place all domestic processing occurring after the effective date of the section on the same competi-

tive level and processors A and B would each be taxed.[5]

(5) The taxpayer contends that "first domestic processing" in this statute should receive the same interpretation as under the Agricultural Adjustment Act, c. 25, 48 Stat. 31, where the Treasury had construed that term as meaning the first domestic processing in point of time. But the Agricultural Adjustment Act, unlike the present statute, provided in Section 16 (a) for a floor-stocks tax, applicable to articles "processed wholly or in chief value from any commodity with

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[5] Apart from what has already been said, the legislative history of Section 602½ throws no important additional light on the meaning of "first domestic processing." The House Report (H. Rep. No. 704, 73d Cong., 2d Sess., p. 41 (1939–1 Cum. Bull. (Part 2) 554, 585), referring to the provision as to combinations or mixtures, stated:

> To prevent avoidance of the tax by the performance of preliminary processing outside of the United States, the tax is likewise imposed upon the first processing in the United States of mixtures or combinations in chief value of coconut oil or sesame oil, or of both oils.

This statement appears to attribute too narrow a scope to the provision as to combinations or mixtures since, on any view, the provision serves to prevent avoidance of the tax whether or not there has been a preliminary processing of the constituent oil outside the United States. At the same time, it is of some significance that the statement contrasts processings outside and within the United States and assumes that the latter are taxable. The Senate Report (S. Rep. No. 558, 73d Cong., 2d Sess., p. 52 (1939–1 Cum. Bull. (Part 2) 586, 625), contains no similar statement. Nor is the Conference Report further enlightening. H. Conference Rep. No. 1385, 73d Cong., 2d Sess., pp. 29–30 (1939–1 Cum. Bull. (Part 2) 627, 638).

respect to which a processing tax" was levied, and held for "sale or other disposition" at the time a processing tax went into effect. The expression "sale or other disposition" was interpreted by the Commissioner of Internal Revenue to include "held by any person other than an ultimate consumer for processing or use in manufacture or production." Treasury Regulations 82, Article 1 (*i*). In consequence, articles wholly processed and held for sale at the effective date of a tax under that Act and also articles held for further processing at that date were subjected to the floor-stocks tax. The presence of the floor-stocks tax provision manifested a plain intention not to apply the processing tax, provided in Section 9 (a), to such articles, for to have done so would have amounted to double taxation of the same commodity. T. D. 4403, X11-2 Cum. Bull. 430 (1933) (Pet. Br. 17-18), shows the complementary relationship of the processing tax and the floor-stocks tax under that Act. The Commissioner's interpretation of "first domestic processing" under the Agricultural Adjustment Act was thus required by reasons peculiar to that Act, not present with respect to Section 602½.[6]

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[6] It should also be noted that the Agricultural Adjustment Act, unlike Section 602½, did not use the expression "previous first domestic processing."

The relationship of Section 602½ and the Agricultural Adjustment Act was considered at length by the court below, the conclusion being (R. 33) that the two statutes were not in *pari materia*.

This does not mean that the construction of Section 602½ for which the Government contends results in practical effect in a floor-stocks tax. A prime purpose of the floor-stocks tax provided in Section 16 (a) of the Agricultural Adjustment Act was to reach articles wholly processed at the effective date of that Act. The Government does not contend that the instant tax so applies and no question of this nature is presented here.

We submit, therefore, that "first domestic processing" as used in Section 602½ refers to the first domestic processing of the designated oils occurring after the effective date of that section, without additional qualification, and that this follows from the text and purposes of the section considered in relation to the subject matter with which Congress dealt.

B. The application of the Treasury Regulations

Treasury Regulations 48, promulgated August 17, 1934, interpret "first domestic processing" to mean "first use in the United States on or after the effective date of the Act."[7] In respect likewise of many other provisions of the statute concerning these oils, the Regulations spell out in detail the application of the tax and the method of its collection (Appendix, *infra*, pp. 45–50). The Regulations were issued under Section 1101

[7] This provision appears in the amended Regulations as Article 1 (n) (Appendix, *infra*, p. 47). It appeared in the original Regulations as Article 1 (1).

of the Revenue Act of 1926, c. 27, 44 Stat. 9, which was made applicable by Section 602½ (f) of the Revenue Act of 1934. Section 1101 requires the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to publish all needful rules and regulations for the enforcement of that Act. As in other cases, the Regulations thus presented "a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly" while they were "yet untried and new" (*Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315).

Except as to the stocks of oil already in this country, which had previously received one or more domestic processings, the identity of the taxable event raises no question of the character here presented. We have seen from an examination of the provisions and purposes of the statute and the subject matter with which it deals that Congress intended to make no exception in the case of stocks of oil on hand which had previously received one or more domestic processings. Even if the statute were less clear in this regard, the Regulations should serve to resolve any residual doubt. In the narrow field of its application to the stocks of oil already on hand, the statute, if doubt or ambiguity exists, would seem to be peculiarly susceptible to administrative construction. In such circumstances, the contempora-

neous and consistent administrative construction of a statute by the officials charged with its application is entitled to great weight and will be overturned only for the most cogent reasons. *Edward's Lessee* v. *Darby*, 12 Wheat. 206, 210; *United States* v. *Moore*, 95 U. S. 760, 763; *Brewster* v. *Gage*, 280 U. S. 327, 336; *Fawcus Machine Co.* v. *United States*, 282 U. S. 375, 378; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 492; *Norwegian Nitrogen Co.* v. *United States*, *supra*; *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90, 100, 101–103, rehearing denied, 308 U. S. 638; *White* v. *Winchester Club*, 315 U. S. 32, 41.

On the facts of the present case, the Regulations are entitled to even greater weight. Since the promulgation of the Regulations Congress, on one occasion, in 1935, has enacted legislation directly relating to the oils designated in Section 602½, and on five occasions, in 1936, 1938, 1941, and twice in 1942, has amended Section 602½ or its corresponding provisions in the Internal Revenue Code without any indication of disapproval of the Regulations (Appendix, *infra*, pp. 40–45). The 1936 amendment is particularly significant since Congress at this time reviewed the status of the oils, added the fatty acids and salts of certain of the oils to the taxable list, and eliminated the tax with respect to sunflower oil and sesame oil, except as imported prior to the

effective date of the amendment. As so amended and reenacted, the tax continues to be imposed upon the "first domestic processing." It seems unlikely that Congress in so overhauling Section 602½ and in subjecting new articles, including stocks already in this country, to the tax would have failed to examine the Regulations with respect to their treatment of the stocks of oil in this country under Section 602½ as originally enacted. There is affirmative indication, indeed, that the Regulations were examined, for the Senate report on the 1936 amendment expressly refers to the pertinent provision in connection with the definition of combination or mixture (S. Rep. No. 2156, 74th Cong., 2d Sess., p. 30 (1939–1 Cum. Bull. (Part 2) 678, 698)).* Nor can it be doubted that Congress would have voiced its disapproval of the Regulations had it in fact disagreed with them. There is thus presented an appropriate case for the application of the rule that where Congress amends or reenacts a statute without change of particular language following administrative construction of it, such action in the absence of persuasive indication to the contrary may be regarded as confirmation and approval of the meaning attributed to the statute. *National Lead Co.* v. *United States,* 252 U. S.

* The reference is to Article 1 (g) of the original Regulations, which defined a combination or mixture to include at least 10% of one of the taxable oils. This provision appears in the amended Regulations as Article 1 (g) (3).

140, 146; *Brewster* v. *Gage*, 280 U. S. 327, 337; *Burnet* v. *Thompson Oil & G. Co.*, 283 U. S. 301, 307–308; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 492–493; *United States* v. *Dakota-Montana Oil Co.*, 288 U. S. 459, 466–467; *Mass. Mutual Life Ins. Co.* v. *United States*, 288 U. S. 269, 273; *Helvering* v. *Winmill*, 305 U. S. 79, 83; *Morgan* v. *Commissioner*, 309 U. S. 78, 81; *Reinecke* v. *Smith*, 289 U. S. 172, 175. See *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90, 100, rehearing denied, 308 U. S. 638; *Loose-Wiles Biscuit Co.* v. *Rasquin*, 95 F. 2d 438, 440–441 (C. C. A. 2d), certiorari denied, 305 U. S. 611.

It is unimportant under the decisions that the statute should be reenacted without change. It is of significance only that the statute should be left "without material change" (*United States* v. *Dakota-Montana Oil Co., supra; Helvering* v. *Wilshire Oil Co., supra*), or should be "substantially" reenacted (*Helvering* v. *Winmill, supra*). Logically, indeed, amendment of the statute or reenactment with some changes, so long as the language in controversy is not disturbed, would seem to be more persuasive than reenactment without any change whatsoever; for it provides affirmative indication that Congress has reconsidered the section and, only after such reexamination, has decided that the crucial text should be left unchanged. Similarly, in principle and under the decisions, reenactments or amendments after the taxable year are as significant as a reenactment by the statute governing

the taxable year. *Brewster* v. *Gage, supra; Burnet* v. *Thompson Oil & G. Co., supra; Mass. Mutual Life Ins. Co.* v. *United States, supra; Reinecke* v. *Smith, supra.*[9]

The taxpayer nevertheless denies the applicability of the reenactment rule as applied to the 1936 amendment, contending that it fails to indicate Congressional approval of the Regulations and, on the contrary, affirmatively discloses disapproval. As enacted, the 1936 amendment provided as follows:

> SEC. 702. PROCESSING TAX ON CERTAIN OILS.
> (a) The first sentence of section 602½ of the Revenue Act of 1934 is amended to read as follows:

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[9] The so-called reenactment rule has been stated in varying terms and has been applied in the absence of any affirmative indication that the pertinent administrative construction had been called to the attention of Congress. So applied, the reenactment rule has evoked considerable criticism in that it is assertedly unrealistic to suppose that Congress does or can examine into the administrative construction of every provision which it may reenact as a part of a general revenue measure. See, *e. g., F. W. Woolworth Co.* v. *United States*, 91 F. 2d 973, 976 (C. C. A. 2d), certiorari denied, 302 U. S. 768; Paul, *Use and Abuse of Tax Regulations in Statutory Construction*, in Studies in Federal Taxation (Third Series, 1940) 420, 426–437; Surrey, *The Scope and Effect of Treasury Regulations Under the Income, Estate and Gift Taxes*, 88 Univ. of Pa. L. Rev. 556, 559–565 (1940); Griswold, *A Summary of the Regulations Problem*, 54 Harv. L. Rev. 398, 399–404 (1941). But such criticism, as these commentators recognize, is inapplicable to a case such as the present, where there is not only reason to believe that the Regulations would have been called to the attention of Congress, but affirmative indication in a committee report that they were examined.

"(a) There is hereby imposed upon the *first domestic processing* of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound to be paid by the processor, but the tax under this section shall not apply (1) with respect to any fatty acid or salt resulting from *a previous first domestic processing taxed under this section* or upon which an import tax has been paid under section 601 (c) (8) of the Revenue Act of 1932, as amended, or (2) with respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been *a previous first domestic processing* or upon which an import tax has been paid under such section 601 (c) (8)."

(b) Notwithstanding the provisions of subsection (a) of this section, the *first domestic processing* of sunflower oil or sesame oil (or any combination or mixture containing a substantial quantity of sunflower oil or sesame oil), if such oil or such combination or mixture or such oil contained therein was imported prior to the effective date of this title, shall be taxed in accordance with the provisions of section 602½ of the Rev-

> enue Act of 1934 in force on the date of the enactment of this Act. [Italics ours.]

The taxpayer contrasts "a previous first domestic processing taxed under this section" in clause (1) of paragraph (a) of the amendment with "a previous first domestic processing" in clause (2) of the same paragraph. From the difference in phraseology, the taxpayer argues that Congress recognized two categories of "previous first" domestic processings, one taxable and one not taxable. This, it is urged, shows that Congress in the original Section 602½, as well as in the 1936 amendment, did not regard a "previous first domestic processing" as necessarily occurring after the effective date of the statute and, therefore, subject to tax. Since our construction of the statute places the latter interpretation on the expression, the taxpayer concludes that Congress has here voiced disapproval of that construction, as embodied in the Regulations.

It should be noted, at the outset, that the language concerning which the taxpayer raises the dispute does not appear in Section 702 (b) of the 1936 amendment. It seems strange that had Congress meant to disapprove the Regulations as applied to the "first domestic processing" by the language in question, it would have failed to use any such disapproving language in continuing the tax with respect to the "first domestic processing" of sunflower oil and sesame oil already in this country. An examination of Section 702 (a) will

show that there is no such inconsistency in treatment.

The purpose of clauses (1) and (2) in paragraph (a) of the amendment is to prevent double taxation of the same fatty acid, salt, or oil. This, as we have seen, *supra*, p. 17, was the like purpose of the similar proviso in the original Section 602½ as to oil in combinations or mixtures. In connection with this amendment, Congress has gone even further to remove any possible doubt. The 1936 amendment originated in the Senate and the Senate Finance Committee in reporting out the amendment expressly stated that this provision, in its original version, was inserted "in order to avoid double taxation." S. Rep. No. 2156, 74th Cong., 2d Sess., p. 30 (1939–1 Cum. Bull. (Part 2) 678, 698). When the bill went to conference, the conferees amended the section so that it read as finally adopted. The Conference Report on the Revenue Act of 1936 (H. Conference Rep. No. 3068, 74th Cong., 2d Sess.), unlike the usual Conference Report, does not contain a statement on the part of the managers of either the House or the Senate explanatory of Conference amendments. The sole explanation concerning the exclusionary provisions of Section 702 is that contained in the Senate Report referred to, and that purpose was to avoid double taxation. Furthermore, a comparison of the amendment as passed by the Senate (H. R. 12395, 74th Cong., 2d

Sess., Sec. 702) (Pet. Br. 53), and as it was finally enacted, after the Conference changes, confirms this purpose. The Senate version was defective because it did not exclude from the tax the independent processing of fatty acids and salts which had resulted from a previous taxable processing of the oils. This problem arose because as applied to the oils, from which the fatty acids and salts were derived, the tax had already been in effect some two years, and a tax paid on the oils would necessarily have included within its measure the constituent fatty acids and salts. In the interest of avoiding double taxation, the amendment as finally adopted made an express exception in such cases.

It thus seems clear that the phrase "taxed under this section," as it appears in clause (1) of paragraph (a) of the amendment, was inserted merely out of an abundance of caution, to make clear beyond any possible dispute that the statutory "first domestic processing" is a taxable processing. This is so for three distinct reasons:

(1) The purpose of the exclusionary clauses is "to avoid double taxation," not to avoid taxation entirely. Hence the previous first domestic processings referred to in both of these clauses must mean previous *taxable* domestic processings.[10]

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[10] It may also be noted that the alternative condition under both clauses which frees the oil, fatty acid or salt from the processing tax is the payment of an import tax under Section 601 (c) (8).

(2) Even on the taxpayer's view, the domestic processing of a fatty acid or salt occurring after the 1936 amendment would not escape taxation unless a prior tax had been paid with respect to that fatty acid or salt. Yet the same fatty acid or salt, under clause (2), would escape taxation when domestically processed after the 1936 amendment if combined or mixed with some other product, even though no prior tax had been paid on the fatty acid or salt (Pet. Br. 58–59). Since the taxpayer does not, and cannot, deny that the provision as to combinations or mixtures was inserted to prevent avoidance of the tax, Congress on its construction would have squarely defeated that very purpose. This strange result is necessarily reached if the taxpayer's construction is followed. Under the proper view, both clauses (1) and (2) refer to a taxable processing; hence, the fatty acids, salts and oils, whether in or out of a combination or mixture, are treated exactly the same.

(3) As we have seen (*supra,* pp. 18–19) under both the Government's and the taxpayer's position, when properly analyzed, "first domestic processing," however defined, must mean a taxable domestic processing. Under both views, therefore, the phrase "taxed under this section" was inserted merely by way of description and explanation, to avoid any possible misunderstanding.

Accordingly, even if the statute were far less clear than we believe to be the case, the Regula-

tions should be given effect and the tax should be collected on the first domestic processing occurring after the effective date of the Act, without further qualification.

CONCLUSION

For these reasons the judgments of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

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OCTOBER 1943.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal* oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine

*So in original.

Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

* * * * * *

Revenue Act of 1935, c. 829, 49 Stat. 1014:

SEC. 402. COMPENSATORY TAX ON PRODUCTS OF CERTAIN OILS.

During any period after the thirtieth day after the date of the enactment of this Act when—

(1) a processing tax is in effect under section 602½ of the Revenue Act of 1934, or

(2) an import tax is in effect under section 601 (c) (8) of the Revenue Act of 1932, as amended,

there is hereby imposed upon any article (not within the scope of either such tax) manufactured or produced wholly or in chief value from any one or more of the oils subject to either such tax, when such article is imported into the United States from any foreign country or from any possession of the United States or from the high seas, a compensatory tax equivalent to the tax which would be payable under such section 602½ or 601 (c) (8) upon such oil or oils if imported into the United States or if processed in the United States. The tax imposed by this section shall be levied, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930, and shall be treated, for the purposes of all provisions of law (except section 336 of such Act) not inconsistent with this section, as a duty imposed by such Act. All taxes collected under this section on account of coconut oil produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this section.

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 702. PROCESSING TAX ON CERTAIN OILS.

(a) The first sentence of section 602½ of the Revenue Act of 1934 is amended to read as follows:

"(a) There is hereby imposed upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound to be paid by the processor, but the tax under this section shall not apply (1) with respect to any fatty acid or salt resulting from a previous first domestic processing taxed under this section or upon which an import tax has been paid under section 601 (c) (8) of the Revenue Act of 1932, as amended, or (2) with respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been a previous first domestic processing or upon which an import tax has been paid under such section 601 (c) (8)."

(b) Notwithstanding the provisions of subsection (a) of this section, the first domestic processing of sunflower oil or sesame oil (or any combination or mixture containing a substantial quantity of sunflower oil or sesame oil), if such oil or such combination or mixture or such oil contained therein was imported prior to the effective date of this title, shall be taxed in accordance with the provisions of section 602½ of the Revenue Act of 1934 in force on the date of the enactment of this Act.

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 703. EXEMPTION OF PALM OIL AND PALM OIL RESIDUE FROM PROCESSING TAX.

Effective July 1, 1938, section 602½ (a), as amended, of the Revenue Act of 1934 (relating to the processing tax on certain oils) is amended by striking out "but does not include the use of palm oil in the manufacture of tin plate" and inserting in lieu thereof "but does not include the use of palm oil in the manufacture of tin plate or terne plate, or any subsequent use of palm oil residue resulting from the manufacture of tin plate or terne plate".[10]

Revenue Act of 1941, c. 412, 55 Stat. 687:

SEC. 561. PAYMENT OF PROCEEDS OF PROCESSING TAX TO GUAM AND AMERICAN SAMOA.

(a) *Payment to possessions.*—Chapter 21 of the Internal Revenue Code (relating to processing tax on oils) is amended by adding at the end thereof the following new section:

"SEC. 2483. All taxes collected under this chapter with respect to coconut oil wholly of the production of Guam or American Samoa or produced from materials wholly of the growth or production of Guam or American Samoa, shall be held as separate funds and paid to the Treasury of Guam or American Samoa, respectively. No part of the money from such funds shall be used, directly or indirectly, to pay a subsidy to the producers or processors of copra, coconut oil, or allied products,

[10] Section 602½ of the Revenue Act of 1934, as amended, was carried into the Internal Revenue Code as Sections 2470–2482. (U. S. C., Title 26, Sec. 2470–2482.)

except that this sentence shall not be construed as prohibiting the use of such money, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for the acquisition or construction of facilities for the better curing of copra or for bona fide loans to copra producers of Guam or American Samoa."

(b) *Effective date of amendment.*—The amendment made by this section shall be applicable only with respect to taxes collected after the date of enactment of this Act. (U. S. C., Supp. I, Title 26, Sec. 2483.)

Act of September 16, 1942, c. 560, 56 Stat. 752:

That section 2470 (a) (2) of the Internal Revenue Code is hereby suspended: *Provided,* That if the President after receipt by him of a request from the Government of the Commonwealth of the Philippine Islands that the suspension of section 2470 (a) (2) be terminated, shall find that adequate supplies of copra, coconut oil, or both, the product of the Philippine Islands, are readily available for processing in the United States, he shall so proclaim; and thirty days after such proclamation, the suspension of section 2470 (a) (2) of the Internal Revenue Code, shall terminate.

SEC. 2. This Act shall become effective the day following its enactment, and shall terminate on June 30, 1944. (U. S. C., Supp. II, Title 26, Sec. 2470.)

Revenue Act of 1942, c. 619, 56 Stat. 798:

SEC. 621. EXEMPTION FROM PROCESSING TAX OF PALM OIL USED IN MANUFACTURE OF IRON OR STEEL PRODUCTS.

Section 2477 (relating to definition of first domestic processing) is amended to read as follows:

"SEC. 2477. FIRST DOMESTIC PROCESSING DEFINED.

"For the purposes of this chapter, the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of iron or steel products, or tin plate or terne plate, or any subsequent use of palm oil residue resulting from the manufacture of iron or steel products, or tin plate or terne plate."

Treasury Regulations 48, promulgated August 17, 1934:

ART. 1 (as amended by T. D. 4695, XV-2 Cum. Bull. 324 (1936)). *Definitions.*—when used in these regulations, the term—

* * * * * *

(*l*) *Processing* means the use of the oil or oils in the manufacture or production of an article intended for sale.

(*m*) *Use* has a very broad meaning. The term includes, among other things, the using or making use of, or employing, any one or more of the oils, or any combination or mixture of the oils, in any process, or stage or step in the manufacture or production of an

article intended for sale, and includes the manufacture or production of such article in its entirety, whether such oil is used as a component or constituent or ingredient of the article, or is used merely as a means or aid in the manufacture or production of the article, and not as a component or constituent or ingredient. Examples which are in no measure all-inclusive of the *use* contemplated are:

(1) Bleaching, neutralizing, refining, deodorizing, hydrogenating, sulphonating, "twitchellizing," polymerizing, saponifying, or any other commercial processing or any combination of these commercial processings, if such process or combination of processes produces an article intended for sale.

(2) The entire process of manufacture or production of an article intended for sale, where any one or more of the above-enumerated processes are but incidental steps or stages in the continuous course of manufacture or production of the article.

(3) The manufacture or production of an article intended for sale from an oil or oils upon which any of the processes enumerated in (1), above, have been performed either (A) prior to the importation of the particular oil, or (B) prior to the effective date of the Act.

(4) (as further amended by T. D. 4817, 1938–1 Cum. Bull. 522, and by T. D. 5179, 1942–2 Cum. Bull. 292) The use of the oil or oils in connection with any process or stage of the manufacture or production of an article intended for sale, even though the oil is not consumed therein or does not become a component material of the article so produced. The tax does not apply to the use of palm oil, (1) in the manufacture of tin plate, (2) on or after July 1, 1938, in the manu-

facture of terne plate, or (3) on or after November 1, 1942, in the manufacture of iron or steel products. Likewise the tax does not apply to any use on or after July 1, 1938, of palm oil residue resulting from the use of such oil in the manufacture of tin plate, or terne plate, or to any use on or after November 1, 1942, of palm oil residue resulting from the use of such oil in the manufacture of iron or steel products.

(*n*) *First domestic processing* means the first use in the United States on or after the effective date of the Act. At all times in these regulations, the term *processing* or *first domestic processing* will be deemed to be synonymous with "use" or "first use in the United States on or after the effective date," respectively, and will include the meanings implied in the latter terms by subdivision (*m*), above.

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ART. 3 (as amended by T. D. 4695, *supra*). *Imposition of the tax.*—(*a*) *For the period 11.40 a. m., eastern standard time, May 10, 1934, to 12 midnight, eastern standard time, August 20, 1936.*—During the period 11.40 a. m., eastern standard time, May 10, 1934, to 12 midnight, eastern standard time, August 20, 1936, tax is imposed on the first domestic processing of coconut oil, palm oil, palm kernel oil, sesame oil, sunflower oil, or any combination or mixture of such oils.

(*b*) *For the period beginning with 12.01 a. m., eastern standard time, August 21, 1936.*—Beginning with 12.01 a. m., eastern standard time, August 21, 1936, tax is imposed on the first domestic processing of coconut oil, palm oil, palm kernel oil, fatty acids and salts derived from such oils as well as combinations or mixtures of such oils,

fatty acids, or salts. However, tax shall not be imposed on any fatty acid or salt (1) resulting from a first domestic processing of coconut oil, palm oil, or palm kernel oil upon which tax has been paid under section 602½ of the Revenue Act of 1934, as amended, or (2) upon which an import duty has been paid under section 601 (c) 8 of the Revenue Act of 1932, as amended.

Beginning with 12.01 a. m., eastern standard time, August 21, 1936, no tax shall be imposed with respect to a combination or mixture of coconut oil, palm oil, palm kernel oil, fatty acid, or salt of such oils where such oil, fatty acid, or salt has (1) previously been subjected to tax under section 602½ of the Revenue Act of 1934, as amended, or (2) been subjected to the import tax imposed under section 601 (c) 8 of the Revenue Act of 1932, as amended.

The tax shall apply to sesame oil, sunflower oil, or any combination or mixture of sesame oil or sunflower oil, if such oil, combination or mixture, or the oil contained in such combination or mixture was imported prior to 12.01 a. m., eastern standard time, August 21, 1936.

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ART. 4 (as amended by T. D. 4695, *supra*). *When tax attaches.*—(*a*) *Generally.*—The tax attaches upon the first domestic processing of the oil. If some part of the processing of a particular quantity of oil takes place on or after the effective date, the tax attaches notwithstanding that some part of the processing of such quantity took place before the effective date.

(*b*) *For the period 11.40 a. m., eastern standard time, May 10, 1934, to 12 midnight, eastern standard time, August 20, 1936.*—If coconut oil, palm oil, palm kernel oil, sesame oil, sunflower oil, or a combination or mixture of such oils, has been refined, sulphonated, sulphated, hydrogenated, or otherwise processed, either prior to the importation thereof or prior to 11.40 a. m., eastern standard time, May 10, 1934, or both, the tax attaches to the first domestic processing of such oils, or combinations or mixtures, after such time, in the manufacture or production of an article intended for sale.

(*c*) *For the period beginning with 12.01 a. m., eastern standard time, August 21, 1936.*—Beginning with 12.01 a. m., eastern standard time, August 21, 1936, the tax will attach to the first domestic processing of coconut oil, palm oil, palm kernel oil, fatty acids and salts derived from such oils as well as combinations or mixtures of such oils, fatty acids, or salts.

The tax attaches to sesame oil or sunflower oil, or a combination or mixture of such oils, imported prior to 12.01 a. m., eastern standard time, August 21, 1936, and first domestically processed subsequent to such time.

However, no tax will attach to the first domestic processing of fatty acids or salts of coconut oil, palm oil, or palm kernel oil if the coconut oil, palm oil, or palm kernel oil from the first domestic processing of which the fatty acids or salts resulted, had been subjected to tax under section 602½ of the Revenue Act of 1934, as amended, or if such oils had been subjected to the

import tax imposed under section 601 (c) 8 of the Revenue Act of 1932, as amended.

No tax shall attach to a combination or mixture of coconut oil, palm oil, palm kernel oil, fatty acids or salts of such oils, where such oil, fatty acid, or salt has previously been subjected to tax under section 602½ of the Revenue Act of 1934, as amended, or been subjected to the import tax imposed under section 601 (c) 8 of the Revenue Act of 1932, as amended.

No tax shall attach to sesame oil, sunflower oil, or any combination or mixture of such oils, if such oils, combinations or mixtures, or the oils contained in such combinations or mixtures were imported subsequent to 12 midnight, eastern standard time, August 20, 1936.

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